Supreme Court, U.S.
FILED

03 435 SEP 17 2003

No.

IN THE

Supreme Court of the United States

HAROLD LEONARD,

Petitioner,

v.

UNIVERSITY OF DELAWARE,
a corporation of the State of Delaware,
PAUL METTLER, and MARY MARTIN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The Petitioner's case should be heard by this Honorable Court. The Petitioner, Dr. Harold Leonard, hired an attorney who violated court orders, refused to communicate with his client, and failed to represent his client's best interests. Unfortunately, due to the scheduling of a trial, the Petitioner could not hire another attorney. The attorney's ineffectiveness caused his client to be bound by a settlement agreement that did not include the material essential terms requested by his client. Due to the Petitioner's protest of the settlement, he was erroneously sanctioned by the court. The docket conflicted with the hearsay and false impressions made by the Respondents.

An attorney's ineffectiveness is a violation of a person's constitutional due process rights. Moreover, the end result was pure injustice when the court penalized the Petitioner for the attorney's misrepresentation and violation of court orders.

I. WHETHER THE COURT ABUSED ITS DISCRETION IN ENFORCING A SETTLEMENT CONTRACT WHERE ESSENTIAL TERMS WERE NOT INCLUDED?

II. WHETHER THE PETITIONER SHOULD BE SANCTIONED AFTER THE DOCKET ESTABLISHED INEFFECTIVE ASSISTANCE OF COUNSEL PREJUDICING HIS CLIENT AND VIOLATING HIS DUE PROCESS RIGHTS?

TABLE OF CONTENTS

Page

Questions Presented i

Table Of Contents ii

Table Of Authorities iii

Opinions Below 1

Statement of the Basis of Jurisdiction of the Supreme Court 1

Constitutional Statutory and Ordinance Provisions Involved in this Case 2

Statement of the Case 3

Argument 8

I. The Court Abused its Discretion in Enforcing A Settlement Contract Where Essential Terms Were Not Included Due To His Attorney's Ineffectiveness 8

II. The Petitioner Should Not Be Sanctioned After The Docket Established Ineffective Assistance of Counsel That Prejudiced His Client and Violated His Due Process Rights 12

Conclusion 16

TABLE OF AUTHORITIES

Page

Cases:

Alyeska Pipeline Service Co. v. Wilderness Society., 421 U.S. 240 (1975) 12, 15

Callie v. Near, 829 F.2d 888, 890 (9th Cir. 1987) 10

Chambers v. Nasco, 501 U.S. 32 (1991) 15

Garabedian v. Allstates Eng'g Co., 811 F.2d 802, 203 (3rd Cir. 1987) 10

General Eng'g v. Martin Marietta Alumnia., 783 F.2d 352, 356 (3rd Cir. 1986) 11

Hobbs v. American Investors Mgt., Inc., 576 F.2d 29, 35 (3rd Cir. 1978) 12

Hutto v. Finney, 437 U.S. 678, 689 n.14 (1986) 15

Industrial America, Inc. v. Fulton Indus., Inc., 285 A.2d 412, 415 (Del. 1971) 11

Pantzer v. Shields Dev. Corp., 660 F.Supp. 56, 59 (D.Del. 1986) 11

Taylor v. Perini, 503 F.2d 899, 904 (6th Cir. 1974) 13

Telephone & Data Sys., Inc. v. Eastex Cellular L.P., 1993 Del.Ch.LEXIS 182 11

The Intellisource Group, Inc. v. Williams., 1999 U.S.Dist.LEXIS 12446 9

Transamerican Steampship Corp. v. J. Kevin Murphy., 1989 Del.Ch.LEXIS 13 13

Statutes:

28 U.S.C. Section 1254 1

Constitutional and Statutory Provisions:

Fourteenth Amendment, US Constitution 2

Other Authorities:

Black's Law Dictionary, 5th Ed. (1979)..... 13

APPENDIX

Appendix A- Sur Petition for Rehearing *En Banc*, Dated June 19, 2003 ..... 1a

Appendix B – Opinion, Dated May 8, 2003 ..... 3a

Appendix C – Judgment, Dated May 8, 2003 ..... 8a

Appendix D – Order, Dated July 9, 2002 ..... 10a

Appendix E – Memorandum Opinion, Dated May 24, 2002 ..... 14a

OPINIONS BELOW

On July 2, 1996, the Petitioner filed a Complaint in the United States District Court for the Delaware District against the Respondents.

On May 24, 2002, the District Court granted the Respondents' Motion to Enforce a Settlement Agreement where the purported agreement contained the award of a master's degree and a monetary award. Also, the Court awarded the Respondents' counsel attorneys' fees and costs as a result of the Petitioner's alleged bad faith and vexatious behavior on July 9, 2002. Appendix at pg. 10a.

The United States Court of Appeals for the Third Circuit affirmed the District Court's decision on May 8, 2003 [1]. Appendix at pg. 3a. The Petitioner's Sur Petition for Rehearing *En Banc* was denied on June 19, 2003. Appendix at pg. 1a.

STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

The statutory provision for this Court's jurisdiction is 28 U.S.C. Section 1254. The United States Court of Appeals for the Third Circuit affirmed the United States District Court for the District of Delaware" decision on May 8, 2003. The Petitioner" Petition for Rehearing en Banc was denied on June 19, 2003.

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[1] The Third Circuit deemed that the issue on appeal for enforcement of the settlement contract would not be addressed due to the late filing of the notice of appeal.

CONSTITUTIONAL, STATUTORY AND ORDINANCE PROVISIONS INVOLVED IN THIS CASE

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment, United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

On July 2, 1996, Dr. Harold Leonard, the Petitioner, filed a complaint in the United States District Court for the District of Delaware against the University of Delaware, Paul Mettler and Mary Martin, collectively the "Respondents", alleging violations of his constitutional right to due process and for breaching a prior settlement agreement. The Petitioner alleged that the faculty of the Respondents Physical Therapy Department forced him out of the program and the Respondents.

A ***signed*** settlement was reached in February of 2000 which was docketed in the District Court; the terms included $250,000.00 to the Petitioner, a masters degree in Physical Therapy [2] and his record cleared of the illegal expulsion and dismissal. The settlement was never consummated because the Respondent refused to comply with the terms after they signed the agreement and the District Court failed to enforce it.[3]

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[2] The Petitioner had fifty-eight graduate credits. The Petitioner requested a degree in Anatomy and Physiology which required thirty-five credits. The Respondent insisted to give the Petitioner a degree in a curriculum – something the Petitioner never studied. The Petitioner did not take courses in health care promotion, only anatomy and physiology. Therefore, the Respondents' unethical behavior and refusal to award the Petitioner with an appropriate degree caused delays.

[3] Given the terms of the original settlement compared to the one enforced by the court, the original agreement was more favorable

In October of 2001, the Respondents offered Petitioner attorney fees of $150,000.00, offered petitioner admittance to the physical therapy program. However, due to the six year elapse of time in the program, the Respondents then believed that it was not advisable.

On November 2, 2001, a pretrial hearing was scheduled, but it was changed to a day of mediation before a magistrate and judge to no avail. A trial, that was scheduled eighteen months before hand, was to occur two weeks later (November 13th). The Respondents continued the trial on November 9th. On November 13, 2001, the Petitioner's attorney then requested a withdrawal from the case. However, on November 20, 2001, the court did not issue an opinion and ordered that the attorney continue to represent him, including his attendance at a settlement conference that same day. The Petitioner's attorney failed to appear at the settlement conference and no settlement was reached, but the court did issue a ninety day mandate to settle the case or else a new trial date would be scheduled. The Petitioner was in New Jersey the very next day and never participated in settlement discussions nor was he communicated regarding final terms of any settlement.

Only minimal efforts of negotiating terms of the settlement agreement were made by Respondents; however, they were not completed within the agreed upon deadline of ninety days. The Respondents forwarded a letter outlining a

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since the Petitioner would receive a physical therapy degree and the net monetary was more favorable.

proposed settlement on January 18, 2002 which stated "once you have approved the enclosed, we can finalize the terms of the Agreement and Release." In response, the Petitioner's attorney made modifications to the January 18th proposal. On March 4th, the Respondents sent another letter with a proposed Settlement Agreement of eleven paragraphs, which was rejected. There was a lack of communication between the Petitioner and his attorney as was evidenced in the transcripts – there was a dispute as to what constituted a fair settlement.

The Petitioner's attorney failed to communicate with the Respondents' counsel, the court and his client regarding the negotiating terms of the settlement, since it was his intent to withdraw from the case even though the court ordered him to remain the Petitioner's attorney. The Respondents failed to offer a fair and reasonable settlement that the Petitioner could accept within the court required ninety day period. The Petitioner would never agree to a settlement unless at the minimum that there was a removal of the inappropriate dismissal from his record and the illegal expulsion. The Respondent and his attorney were well aware throughout the litigation that clearing his academic record was extremely important to the Petitioner.

On March 24, 2002, the Petitioner forwarded notice to the court, since his attorney failed to do so, requesting that the case be listed once again for the trial calendar since the case had not settled within the ninety day time deadline ordered by the Court on November 20th and there were material dis-

agreements between the parties regarding the terms of the settlement.

In response to the request for scheduling a trial, the Respondents filed a Motion to Enforce the Settlement Agreement – a settlement agreement that the Petitioner rejected since it did not include essential terms that the Petitioner wanted included in it. In their Motion, the Respondents requested that the court award them the necessary costs, expenses and attorneys' fees that they expended as a result of the Petitioner's alleged failure to comply with the settlement agreement.

On May 24, 2002, the District Court granted the Respondents' Motion to Enforce the Settlement Agreement and then awarded the Respondents' attorneys' fees. Thereafter, against his wishes and intent, and while an appeal was pending before the Third Circuit Court of Appeals, the Petitioner's attorney, (even though he did not want to represent him), provided the Petitioner with settlement checks without any instructions that a separate escrow account should be established pending appeal. He ill-advised the Petitioner that the latter had thirty days from the date of executing the settlement documents to file an appeal. The Petitioner's attorney refused to continue to represent him in the appellate process.

The Petitioner kept the sealed envelopes containing the transcript and diploma in safekeeping. Even though the checks were negotiated and since he was not represented by counsel, the Petitioner diligently placed them in a separate escrow account. The Petitioner was forced to pursue his ap-

peal pro-se due to his attorney's ineffectiveness and mishandling of the case.

ARGUMENT

I. THE COURT ABUSED ITS DISCRETION IN ENFORCING A SETTLEMENT CONTRACT WHERE ESSENTIAL TERMS WERE NOT NEGOATIATED AND INCLUDED DUE TO HIS ATTORNEY'S INEFFECTIVENESS THEREBY VIOLATING HIS CONSTITUTIONAL RIGHTS.

The lower courts erroneously refused to address the issue as to the enforceability of the settlement agreement. The Petitioner argues that the Notice of Appeal was timely filed with respect to the Order granting the Respondents' Motion to Enforce the Settlement Agreement as well as the Order awarding the Respondents' legal fees. The Respondents verified the timeliness with the District Court and never raised it as an issue in a Motion to Dismiss. The crux of the Petitioner's appeal focuses upon him being sanctioned due to his alleged failure to abide by the terms of a settlement agreement that lacked material terms. The issues of the enforcement of the settlement agreement and the award of sanctions are intertwined and must be addressed, since they both stem from his ineffective assistance of counsel.

The Petitioner believed that he was represented by counsel and that his attorney should be accountable for timely filings. The Petitioner's attorney was well aware that it was his intent to file an appeal from the two orders. The Petitioner filed the Notice of Appeal pro se and should not be sanctioned for his attorney's failure to comply with the rules. The Third Circuit did not review the Petitioner's issues on appeal due to his status.

The Petitioner's attorney failed to negotiate and include essential terms in the settlement agreement. Courts should not enforce alleged settlement agreements, in the absence of an evidentiary hearing, where material facts concerning the existence or terms of an agreement to settle are in dispute. *The Intellisource Group, Inc. v. Williams*, 1999 U.S.Dist.LEXIS 12446. In order to enforce a settlement agreement, the court must determine whether the agreement at issue is an enforceable contract under state law. *Id.*

Under Delaware law, a contract "comes into existence if a reasonable person would conclude, based on the objective manifestations of assent and the surrounding circumstances, that the parties intended to be bound by their agreement on all the essential terms. *Id.* An enforceable contract did not exist since the Petitioner and Respondents did not reach a definite agreement on all the essential terms.

The lower courts were wrong in stating that the Respondents were ready and willing to fulfill their terms of the proposed settlement. The Respondent acted in bad faith and refused to negotiate terms of the settlement and forced terms upon the Petitioner when they were aware that his attorney was not counseling him. Even though they took initiative steps, they failed to comply with all of the essential terms of the proposed settlement. The docket showed that by the end of March the Respondents had not fully met their obligations. During the November 20, 2001 settlement conference, where the Petitioner's attorney left and he was forced to represent himself pro-se, the parties had agreed that the settlement would be effective only if all the terms were met within

ninety days. Four months passed to no avail. Thus, by the terms of the settlement proposal regarding restrictive dates, the proposal failed. The communications between the parties and the Petitioner and his attorney as late as March of 2002 evidenced that no agreement was reached within the ninety days. Obviously not all of the materials facts of the settlement agreement were agreed upon and since the agreement could not be finalized by February 20th then it was the intent of the parties to bring the case to trial. The Petitioner would never agree to settlement unless at the minimum that there was a removal of the inappropriate dismissal from his record and the illegal expulsion. Clearing his academic record was extremely important to the Petitioner.

Where material facts concerning the existence of terms of an agreement to settle are in dispute, the parties must be allowed an evidentiary hearing. *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987); *Garabedian v. Allstates Eng'g Co.*, 811 F.2d 802, 803 (3rd Cir. 1987). In our facts, there was no evidentiary hearing which is contrary to the law since there is a dispute as to whether a settlement exists. If this court looks to the May 2002 Motion to Enforcement the Settlement Agreement and the filings thereafter, it is clear that there was no hearing, especially given the fact that the Petitioner's counsel failed to communicate any proposed settlement and hearing. If either party knows or has reason to know that the other party regards the agreement as incomplete and intends that no obligation shall exist until other terms are assented to or until the whole has been reduced to another written form, the preliminary negotiations and agreements do not constitute a contract. Overt manifestation of assent – not subjective

intent—controls whether a settlement agreement exists. *Telephone & Data Sys., Inc. v. Eastex Cellular L.P.,* 1993 Del.Ch. LEXIS 182; *Industrial America, Inc. v. Fulton Indus., Inc.*, 285 A.2d 412, 415 (Del. 1971); *Pantzer v. Shields Dev. Corp.*, 660 F.Supp. 56, 59 (D.Del. 1986) (court must look to the parties' antecedent expressions, their past action and custom, and other circumstances.)

Also, since the Petitioner's counsel was seeking withdrawal from the action and the Petitioner represented himself pro-se for a period of time, the Petitioner should be provided the opportunity to negotiate terms in good faith. There was a definite lack of communication between the Petitioner and his attorney as evidenced in the transcripts – there was a dispute as to what constituted a fair settlement. At the November 20th morning hearing, the Judge required that the Petitioner's attorney continue to represent him until he made a ruling on the Motion to Withdraw. But at the second settlement conference one hour later, the Attorney failed to appear. Thus, the Petitioner's attorney failed to provide any legal counsel, legal advice, or act in accordance with the court's order to continue to represent the Petitioner. The lack of discussions, communications and finalization of any settlement were obvious in the continuous contacts between the Petitioner and his attorney as well as the parties. The Petitioner was compelled and instructed by his Attorney to write to the court directly, even though he still represented the Petitioner. The Petitioner's attorney lacked the authority to settle the Petitioner's case without his approval. *General Eng'g v. Martin Marietta Alumnia*, 783 F.2d 352, 356 (3rd Cir. 1986). Since the Attorney failed to finalize the settle-

ment in his client's satisfactory terms, the Petitioner should not be sanctioned with paying the Respondents' attorneys fees.

The lower courts abused its discretion since the evidence demonstrated that material disputes existed as to the terms of the settlement agreement, that the agreement was not completed within the ninety day deadline, and that it was his intent not to be bound by the proposed agreement – no contract was formed. By enforcing a settlement agreement that the Petitioner did not agree to and without an evidentiary hearing were violations of the Petitioner's due process rights.

II. THE PETITIONER SHOULD NOT BE SANCTIONED AFTER THE DOCKET ESTABLISHED INEFFECTIVE ASSISTANCE OF COUNSEL THAT PREJUDICED HIS CLIENT AND VIOLATED HIS DUE PROCESS RIGHTS.

Attorneys' fees and costs are not ordinarily recoverable and unless specifically authorized by statute are awarded only in extraordinary cases. *Hobbs v. American Investors Mgt., Inc.*, 576 F.2d 29, 35 (3rd Cir. 1978); *Alyeska Pipeline Service Co. v. Wilderness Society,* 421 U.S. 240 (1975). One exception is "the power to assess attorneys' fees for the willful disobedience of a court order as part of the fine to be levied on a defendant...and the authority to award attorneys' fees when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* The lower courts failed to state any supporting evidence of bad faith or vexatious behavior and thus its decision must be reversed. *Hobbs & Company, Inv. V. American Investors Manage-*

ment, Inc., 576 F.2d 29 (1978); *Taylor v. Perini*, 503 F.2d 899, 904 (6th Cir. 1974). Bad faith is defined as "implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties." *Black's Law Dictionary*, 5th Ed. (1979).

The courts erred in concluding that the Petitioner's attempts at his obligations under the settlement agreement were in bad faith and were vexatious. But they cited no evidence to support their conclusion based upon the definition. As the court stated at the November 20th hearing, the Petitioner was amenable "to a reasonable offer of settlement." The Petitioner, in good faith, believed that he was never tendered a reasonable offer. Instead, the Respondent took advantage of the pro-se Petitioner due to his attorney's ineffectiveness. The Respondent forced terms upon the Petitioner when they knew he was not properly represented.

The lower courts forced the Petitioner into a settlement where the material elements were not finalized, the Petitioner's attorney did not negotiate and communicate terms of the agreement with his client, and the Petitioner was forced to represent himself – all resulting in the Petitioner be bound to an unfavorable settlement. A party is entitled to withdraw from an agreement until he agrees to be bound to a contract. *Transamerican Steampship Corp. v. J. Kevin Murphy*, 1989 Del.Ch. LEXIS 13. The Petitioner attempted to withdraw from the agreement and instead of the lower courts protecting his interests, he was sanctioned. The role of the court

was to protect the Petitioner's constitutional rights; however, instead, the lower courts not only violated his rights, they imposed attorneys' fees without cause.

The lower courts were more interested in punishing the Petitioner for complaining about the settlement and poor representation and that the case was ongoing for almost six years instead of commending the Petitioner who was forced to act pro-se per instructions of his attorney. The facts in our case do not represent such extraordinary facts that warrant attorneys fees. There was no evidence of willful, bad faith or vexatious behavior.

The Respondents made unsupported allegations that there was a settlement agreement, even though they refer to correspondence of negotiations between the parties' two attorneys. Negotiations do not equal a final settlement agreement that the parties intend to be bound – a fact that the Respondents fail to admit. In fact, the Respondents admitted that the Petitioner objected to the alleged settlement agreement just two months prior to their motion, thus, they were on notice that the Petitioner intended not to be bound by the agreement.

The Respondents filed their Motion to Enforce Settlement Agreement in bad faith – on the one hand requesting that the most recent of a history of settlement terms be accepted but on the other hand acknowledging that the Petitioner rejected the latest offer. The Respondents failed to state that the reason the Petitioner failed to reject the settlement offer until March 24th because he was not notified of the existence of the offer by his attorney – the essential argument of why the

Petitioner alleges that he should not be bound and never intended to be bound by the settlement agreement.

The "American Rule" prohibits the shifting of attorney's fees in most cases. *Alyeska Pipeline, supra* at 259. The Petitioner never caused delays or disrupted the litigation process, but was the party that contacted the court to reschedule the trial after the ninety day period elapsed. *Hutto v. Finney*, 437 U.S. 678, 689 n.14 (1986). Since the Petitioner failed to have an evidentiary hearing regarding the enforcement of the settlement agreement, the Petitioner cannot be liable for inappropriate conduct and delay since he was denied his due process rights of having the opportunity to be heard. *Chambers v. Nasco*, 501 U.S. 32 (1991). The Respondents failed to meet their heightened burden. Since there is no evidence of willful, bad faith or vexatious behavior, the award of attorneys' fees must be reversed. The Petitioner was compelled to handle his case pro se even though he was represented by counsel. Since the Petitioner's constitutional rights were violated, the award of attorneys' fee was inappropriate.

CONCLUSION

The Court should grant *certiorari* to review this important constitutional matter to deem when there is clear docketed evidence of ineffective assistance of counsel which prejudiced the client and caused the client to be bound by a settlement agreement that did not contain material and essential terms is a violation of due process rights. Furthermore, a client should not be sanctioned for having an ineffective attorney.

Respectfully submitted,

DR. HAROLD L. LEONARD,
Pro Se - The Petitioner

APPENDIX A – SUR PETITION FOR REHEARING EN BANC, DATED JUNE 19, 2003

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 02-3202

HAROLD LEONARD,
Appellant,

v.

UNIVERSITY OF DELAWARE, a corporation of the State of Delaware; PAUL METTLER; MARY MARTIN

On Appeal from the United States District Court
For the District of Delaware
(D.C. Civ. No. 96-cv-00360)
District Judge: The Honorable Gregory M. Sleet

Present: SCIRICA, *Chief Judge,* SLOVITER, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES and SMITH, *Circuit Judges*

SUR PETITION FOR REHEARING *EN BANC*

The Petition for Rehearing filed by the Appellant in the above-entitled matter, having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the Petition for Rehearing by the panel and the Court *en banc*, is hereby DENIED.

BY THE COURT,

_____

United States Circuit Judge

DATED : 19 JUN 2003

APPENDIX B- OPINION DATED MAY 8, 2003

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

HAROLD LEONARD,

Appellant,

v.

UNIVERSITY OF DELAWARE, a corporation of the State of Delaware; PAUL METTLER; MARY MARTIN

On Appeal From the United States District Court
For the District of Delaware
(D. C. Civ. No. 96-cv-00360)
District Judge: Honorable Gregory M. Sheet

Submitted Under Third Circuit LAR 34.1(a)
May 6, 2003

Before: SCIRICA, FUENTES and SMITH, *Circuit Judges*

(Filed May 8, 2003)

OPINION

PER CURIAM

On November 20, 2002, appellant Harold Leonard and appellees the University of Delaware, Paul Mettler, and Mary Martin agreed to a settlement of Leonard's civil action, which provided for the University to pay Leonard $300,000 and to award him a Master of Science degree in Health Promotion in exchange for a release of all claims arising from Leonard's dismissal in 1995 from the University's Graduate Physical Therapy program. After the settlement was reached, the University undertook to revise and reclassify Leonard's academic record in the Graduate Physical Therapy program to reflect the agreed upon degree. This process took some time as Leonard requested modifications in the revised transcript, and the University made the requested modifications.

In March 2002, and before the University could complete its obligations under the Settlement Agreement, Leonard complained to the District Court about his attorney, and complained that the Settlement Agreement was the product of duress. In response, the University moved to enforce the settlement agreement, and included a claim for attorneys' fees associated with the motion to enforce.[1]

The District Court granted the motion to enforce in an order entered on May 24, 2002. [2] The court concluded that

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[1] Leonard's attorney also moved to withdraw but the District Court did not rule on the motion.

[2] The District Court did not order the action dismissed after the settlement was reached and thus retained jurisdiction. *Cf. Sawka v. Healtheast, Inc.*, 989 F.2d 138, 141 (3d Cir. 1993) (ordinarily district

the Settlement Agreement was enforceable, that Leonard's attorney had not provided inadequate representation, and that Leonard's allegations of duress were wholly unsupported. The court also granted the University's request for attorneys' fees, finding that Leonard was not acting in good faith in rejecting the Settlement Agreement. The District Court did not quantify the amount of the attorneys' fees in this order. In an order entered on July 9, 2002, the District Court awarded attorneys' fees in the amount of $5,837.75, and allowed the University to deduct this amount from the settlement. The settlement money was forwarded to Leonard's attorney along with the diploma and the revised final transcript.

Leonard filed a notice of appeal *pro se* on August 8, 2002. In his brief on appeal he has argued that the District Court erred in enforcing the Settlement Agreement, because final settlement was not reached within ninety days of the settlement conference, and because his attorney lacked authority to settle on his behalf. The University, in addition to filing a brief on appeal, has moved to dismiss the appeal as moot with respect to the enforcement issue, because Leonard cashed the settlement check and is enjoying the benefits of his new graduate degree. Leonard has responded to this motion, contending that, although he cashed the settlement check, he placed the funds in escrow and has not made use of them.

We first address the extent of our jurisdiction over this appeal. We conclude that we lack jurisdiction to review the

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court has no power once case is dismissed to enforce settlement agreement not incorporated into order of district court).

order entered on May 24, 2002, enforcing the Settlement Agreement. The May 24 order was a decision on the merits, and a decision on the merits is a final decision for purposes of 28 U.S.C. § 1291, and is therefore immediately appealable, even though the amount of attorneys' fees remains to be determined. *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1988).[3] Leonard had 30 days after May 24, 2002, in which to file a notice of appeal from the order enforcing the Settlement Agreement. *Fed. R. App. Pro.* 4(a)(1)(A). The August 8, 2002 notice of appeal was untimely with respect to this order. The time periods prescribed for filing a notice of appeal are "mandatory and jurisdictional." *Browder v. Director of Dep't of Corrections,* 434 U.S. 257, 264 (1978). We thus lack jurisdiction to consider Leonard's arguments in his brief and reply brief concerning the propriety of the District Court's order enforcing the Settlement Agreement.

We do have jurisdiction over the order entered on July 9, 2002, awarding attorneys' fees to the University in the amount $5,837.75. We will affirm. Courts have inherent equity powers to award attorneys' fees when a party acts vexatiously, in bad faith, or for oppressive reasons. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 45-46 (1991). This "inherent power extends to a full range of litigation abuses."

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[3] Similarly, a timely motion for attorneys' fees under Federal Rule of Civil Procedure 54(d)(2) does not automatically toll the time for taking an appeal under Federal Rule of Appellate Procedure 4(a)(4). It does so only where the district court orders that the motion have the same effect under Rule 4(a)(4) of the Federal Rules of Appellate Procedure as a timely motion under Rule 59. *Fed.R.Civ.Pro.* 58(c)(2).

Id. at 46. Leonard has argued in his brief that attorneys' fees were not appropriate because he acted in good faith in challenging the settlement.

We have reviewed the record and the parties' contentions on appeal, however, and we conclude that the District Court did not abuse its discretion in awarding attorneys' fees. The record shows that Leonard made demands and that the university agreed to all of them. After discharging its obligations under the agreement, the University was entitled to a release of all claims in accordance with the agreement, and to see the litigation come to an end. Leonard's insupportable renunciation of the agreement cut the ground from under this reasonable expectation and forced the University back into court, and for that, the District Court properly exercised its inherent power to sanction to require Leonard to compensate the University for attorneys' fees.

We will affirm the order awarding attorneys' fees to the University in the amount of $5,837.75, dismiss the appeal from the order enforcing the settlement agreement for the lack of appellate jurisdiction, and deny the appellees' motion to dismiss the appeal as moot from the order enforcing the settlement agreement.

APPENDIX C – JUDGMENT DATED MAY 8, 2003

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-3202

HAROLD LEONARD,
Appellant,
v.
UNIVERSITY OF DELAWARE, a corporation of the State of Delaware; PAUL METTLER; MARY MARTIN

On Appeal from the United States District Court
For the District of Delaware
(D.C. Civ. No. 96-cv-00360)
District Judge: The Honorable Gregory M. Sleet

Submitted Under Third Circuit LAR 34.1 (a)
May 6, 2003

Before: SCIRICA, FUENTES and SMITH, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of Delaware. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered on July 9, 2002 be, and the same is, hereby affirmed, and the appeal from the judgment entered on May 24, 2002 is DISMISSED for lack of appellate jurisdiction as untimely.

Costs taxed against appellant. All of the above in accordance with the Opinion of the Court.

ATTEST:

Clerk

DATED : May 8, 2003

Certified as a true copy and issued in lieu of
a formal mandate on June 27, 2003

Teste:

Clerk, United States Court of Appeals
for the Third Circuit

APPENDIX D – ORDER DATED JULY 9, 2002

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

HAROLD LEONARD,	)	
Plaintiff,	)	Civil Action No.
v.	)	96-360-GMS
UNIVERSITY OF DELAWARE, a corporation of the State of Delaware, ; PAUL METTLER; MARY MARTIN	)	
Defendants.	)	

ORDER

I. INTRODUCTION

On July 2, 1996, Harold Leonard ("Leonard") filed the above-captioned action against the University of Delaware ("the University"), Paul Mettler, and Mary Martin (collectively "the defendants") for violating his constitutional right to due process and for breaching a prior settlement agreement. The parties reached a settlement on November 21, 2001. On May 24, 2002, the court granted the defendants' motion to enforce this settlement. In that order, the court also awarded the defendants reasonable attorneys'

fees incurred in preparing the motion to enforce the settlement agreement.

Presently before the court is the defendants' fee petition and motion to deduct the fees from the settlement amount. For the following reasons, the court will award the defendants reasonable attorneys' fees. The court will further grant the defendants' motion to deduct the fees from the settlement amount.

II. DISCUSSION

A. Reasonableness of Fees

The defendants request fees and expenses in the amount of $6,900.87. Leonard objects to the reasonableness of these fees because of the fee petition: (1) lacks an affidavit establishing a normal billing rate; (2) lacks appropriate documentation as to the hours expended and the hourly rate; and (3) lacks evidence supporting the reasonableness and necessity of the expenses for which reimbursement is sought.[4]

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[4] The court is also in receipt of the Leonard's letter dated June 19, 2002, which he filed without the assistance of his counsel. The letter contains arguments solely to the effect that the court should not have enforced the settlement agreement and that an award of attorneys' fees was inappropriate in this case. The letter does not contest the amount of attorneys' fees enumerated in the fee petition presently pending before the court. Thus, to the extent that the letter is a motion for reconsideration of the court's May 24, 2002 Memorandum and Order, it will be disregarded as untimely. *See* Local Rule 7.1.5.

With regard to Leonard's first concern, the court is unpersuaded that the lack of an affidavit renders the fee petition invalid. As the defendants correctly note, the court awarded attorneys' fees as a sanction against Leonard because he acted vexatiously and in bad faith. At such, the court is eminently capable of determining whether the requested fees are a reasonable sanction without the aid of an affidavit.

As to Leonard's second concern, the defendants themselves have already remedied the fee petition's alleged defect. Accordingly, the defendants have now provided the court, and Leonard, with a detailed description of the time expended and the hourly rate utilized for each task. After reviewing this information, the court finds that an award of attorney's fees in the amount of $5,837.75 is reasonable, and will suffice as an appropriate sanction against Leonard.

The defendants additionally request that the court award them $1,063.12 in costs and expenses. The court declines to do so as it has concluded that the above-determined award of attorneys' fees is an adequate sanction on these facts.

B. Deduction of Fees From the Settlement Agreement

The defendants further ask that the court authorize them to deduct the amount of attorneys' fees awarded to them from the amount owed to Leonard under the settlement agreement. Indeed, the defendants submit that such protection is their best, and perhaps only, chance of recovering the awarded attorneys' fees. Given the tortured history of this case, and

specifically the behavior that led the court to sanctioning Leonard, the court will grant this request. In so ordering, the court concludes that this outcome is a fair and prudent manner of safeguarding the funds in dispute.

III. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The Defendants' fee petition (D.I. 251) is approved in the amount of $5,837.75.
2. The Defendants shall deduct this amount from the $6,900.87 currently held in escrow and promptly remit the remainder of the amount held in escrow to the Plaintiff.

Date: July 9, 2002

UNITED STATES DISTRICT JUDGE

APPENDIX E – MEMORANDUM OPINION DATED MAY 24, 2002

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

HAROLD LEONARD,	)	
Plaintiff,	)	Civil Action No.
v.	)	96-360-GMS
UNIVERSITY OF DELAWARE, a corporation of the State of Delaware, PAUL METTLER and MARY MARTIN	)	
Defendants.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On July 2, 1996, Harold Leonard ("Leonard") filed the above-captioned action against the University of Delaware ("the University"), Paul Mettler, and Mary Martin (collectively "the defendants") for violating his constitutional right to due process and for breaching a prior settlement agreement. Specifically, Leonard alleges that the

faculty of the Physical Therapy department were trying to force him out of both the program and the University.

Presently before the court is the defendants' motion to enforce a settlement agreement between the parties. For the following reasons, the court will grant the motion.

II. STANDARD OF REVIEW

A district court has jurisdiction to enforce a settlement agreement entered into by litigants in a case pending before it. *See Hobbs & Co. v. American Investors Mgt., Inc.*,576 F.2d 29, 33 (3d Cir. 1978). Motions for enforcement of settlement agreements resemble motions for summary judgment. *See Tiernan v. Devoe*, 923 F.2d 1024, 1031-32 (3d Cir. 1991). Therefore, the court must employ a similar standard of review. *See id.* The court must treat all the non-movant's assertions as true, and "when these assertions conflict with those of the movant, the former must receive the benefit of the doubt." *Id.* at 1032. Accordingly, "[c]ourts should not summarily enforce purported settlement agreements, in the absence of an evidentiary hearing, where material facts concerning the existence or terms of an agreement to settle are in dispute." *The Intellisource Group, Inc. v. Williams*, 1999 U.S. Dist. LEXIS 12446, at *10 (D. Del. Aug. 11, 1999).

III. BACKGROUND

On November 21, 2001, the defendants maintain that they reached a settlement agreement with Leonard. The terms of the purported agreement contained the following two

conditions: (1) the University would award Leonard a Masters of Science degree in Health Promotion and (2) the University would pay Leonard $300,000.

The parties reached agreement on these terms of settlement as a result of a lengthy settlement conference convened by the court on November 20, 2001. The November 20, 2001 settlement conference was preceded by a settlement conference on November 2, 2001. The purpose of the earlier settlement conference was to discuss the University's offer to permit Leonard to earn a Master's degree in Physical Therapy. After negotiating for several hours, Leonard rejected this offer. At that time, he indicated, through his counsel, Mr. Neuberger, that any settlement agreement would have to include a monetary payment.

Throughout the November 20, 2001 negotiations, the defendants maintain that they were under the impression that Leonard continued to be represented by counsel.[5] Under that assumption, the defendants then proceeded to implement the terms of settlement. This required them to restructure and reclassify Leonard's academic record to support a Master's Degree in Health Promotion. The defendants communicated with Leonard's counsel regarding Leonard's academic record throughout this process.

On January 18, 2002, the defendants' counsel forwarded to Mr. Neuberger the University's proposed revised

---

[5] Although Leonard's counsel had previously filed a motion to withdraw from the case, the court merely took this motion under advisement. Accordingly, Leonard remained represented.

transcript. Once Leonard had reviewed and approved his transcript, the University contends it was prepared to award him a Master's degree in Health Promotion on or about February 5, 2002.[6]

Several weeks after sending the January 18, 2002 communication, the defendants received a voicemail message from Mr. Neuberger. In that voicemail, he indicated that his client had reviewed the proposed revised transcript and had requested that a few modifications be made. The University made the requested changes. On March 4, 2002, the defendants forwarded the revised transcript, along with the Settlement Agreement, to Mr. Neuberger.

On March 24, 2002, the court received a letter directly from Leonard. In that letter, Leonard stated that there was no settlement and requested that his case be put back on the trial calendar. The bases for his request are that: (1) his counsel did not represent him during the settlement negotiations, (2) the settlement is "simply unacceptable," and (3) the settlement agreement is the product of duress.

IV. DISCUSSION

A. The Enforceability of the Settlement Agreement

It is well-settled that the court "has jurisdiction to enforce a settlement agreement entered into by the parties in a case

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[6] February 5, 2002 is the date when the University was to award degrees, following the conclusion of the University's Winter Session.

currently pending before it." *Liberate Technologies, LLC v. Worldgatecommunications, Inc.*, 133 F.Supp.2d 357, 358 (D. Del. 2001); *see also The Intellisource Group, Inc. v. Willimas,* 1999 U.S. Dist. LEXIS 12446, at *10 (Aug. 11, 1999). To do so, the court must determine whether the settlement agreement at issue is an enforceable contract under Delaware law. *See The Intellisource Group, Inc.*, 1999 U.S. Dist. LEXIS, at *12. " Under Delaware law a contract 'comes into existence if a reasonable person would conclude, based on the objective manifestations of assent and the surrounding circumstances, that the parties intended to be bound by their agreement on all essential terms.'" *Id.* at *12 (citing *Telephone & Data Sys., Inc. v. Eastex Cellular, L.P.*, 1993 WL 244770, at *10 (Del. Ch. Aug. 27, 1993)). In other words, an enforceable contract exists if the parties have reached a definite agreement on all essential terms. *See id.*

In the present case, it is clear that the defendants are ready, willing, and able to fulfill their obligations under the settlement agreement. Leonard, on the other hand, is now refusing to fulfill his obligations. Of great importance, however, is the fact that Leonard does not challenge the existence of a settlement agreement between the parties. Indeed, in his March 24, 2002 letter to the court, he acknowledges that he agreed to monetary compensation of $300,000 and a Master's degree. Therefore, whether a settlement agreement actually exists is not at issue. Rather, Leonard argues that any such agreement suffers from defects that would render it void.

Leonard first argues that, although the express terms of the settlement agreement require that he be represented by counsel, he was not represented during the settlement negotiations. The court must disagree. Although Mr. Neuberger filed a motion to withdraw as Leonard's counsel, at no time did the court grant this motion.[7] Moreover, Leonard does not dispute that his attorney had advised him on "acceptable" settlement terms at an earlier time.[8] The fact that Leonard eventually settled on different terms is not proof of inadequate representation. Nor is the court aware of any reason why Leonard could not have consulted with his counsel during the negotiations. To the extent Leonard chose not to do so, the court will not find that this was inadequate representation on Mr. Neuberger's part.

Leonard next argues that he should be permitted to avoid what he now considers to be an "unacceptable" bargain. Although he lists several "unacceptable" terms in his March 24, 2002 letter to the court, in his subsequent "supplemental response" to the defendants' motion to enforce the settlement, Leonard shifts his position. In that response, Leonard indicated that he is now willing to settle if certain additional conditions are met.

Based on Leonard's renewed settlement requirements, the court concluded that Leonard has apparently missed the point of a settlement agreement in the first instance.

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[7] Indeed, as the court took this motion under advisement, it is still pending before the court.

[8] Leonard states that Mr. Neuberger had recommended that he not settle for less that $1.2 million, and that he not agree to any stipulations.

Although Leonard now states that he believes settlement is possible on new grounds, one of his explicit conditions is that the settlement agreement must be worded in "such as [sic] way as not to waive any claim denying there is a settlement." It is thus apparent to the court that Leonard views settlement agreements as pliable instruments, changeable and challengeable at will, rather than the binding contracts that they are. The court will not sanction Leonard's thinly-veiled attempts to challenge the settlement agreement because he has now decided that he is unhappy with the terms to which he agreed in November.[9] *See e.g., Haft v. Dart Group Corp.*, 841 F.Supp. 549, 564 (D. Del. 1993) (stating that, "[o]f course, central to contract law is the notion that the parties are bound by the terms of their agreement.")

Leonard further argues that the settlement agreement was the product of stress and/or duress and must therefore be overturned. The court again finds this argument meritless. To prove duress, Leonard must demonstrate: (1) an improper threat, (2) which overcame his free will, and (3) left him with no reasonable alternative to protect his interest. *See E.I. du Pont de Nemours and Co. v. Custom Blending Int'l, Inc.*,

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[9] Although Leonard makes much of the "late" timing of the payments and receipt of this diploma, he offers no reason why he did not clarify these points before agreeing to the settlement. Although he does state that it was his "understanding" that the payment would be "immediate," there was no time provision in the settlement agreement, there is no evidence that the parties intended such a provision at that time, and it does not appear that the amount of time that has passed has been unreasonable.

1998 WL 842289, at *4 (Del. Ch. Nov. 24, 1998). As proof of his duress, Leonard again argues that Mr. Neuberger's failure to represent him left him "confused in an already stressful situation where [he] lacked experience." He further summarily states that he "felt pressured to settle without counsel." As the court discussed above, Mr. Neuberger continued to legally represent Leonard throughout the settlement negotiations. Leonard was thus not without counsel, nor did he inform the court of any such concerns during the negotiations. He was free to consult with Mr. Neuberger, or not consult with Mr. Neuberger, as was his choice. Nor has he suggested that the defendants acted improperly in their negotiations. Thus, as Leonard has failed to provide any evidence of duress, this argument must fail. *See Quiroga v. Hasbro, Inc.*, 934 F.2d 497, 500 (3d Cir. 1991) (noting that summary judgment shall be granted if, in opposition, the non-moving party rests solely "upon mere allegations, general denials, or . . . vague statements.").

Finally, Leonard urges the court to disregard the settlement agreement because it does not include a provision for the $17,500 that Mr. Neuberger must refund to him. Mr. Neuberger allegedly owes Leonard this money as a result of a breakdown in the attorney-client relationship. The court finds no reason to overturn a valid settlement agreement on this basis. Whether Mr. Neuberger owes Leonard money is a separate issue from whether Leonard wishes to continue pursuing his claim against the defendants. As the settlement agreement, to which Mr. Neuberger himself is not a party, concerns only Leonard's relationship with the defendants, this argument must fail.

Because the court has found no material facts concerning the existence, or terms, of the settlement agreement to be genuinely in dispute, it will enforce the agreement.

B. The Defendants' Request for Attorneys' Fees

In their motion to enforce the settlement agreement, the defendants also request that the court award them the necessary costs, expenses and attorneys' fees that they expended as a result of Leonard's failure to comply with the settlement agreement. The court will do so.

"Attorneys' fees and costs are not ordinarily recoverable and unless specifically authorized by statute are awarded only in extraordinary cases." *Hobbs v. American Investors Mgt., Inc.* 576 F.2d 29, at 35 (3d Cir. 1978)(internal citations omitted). There are, however, exceptions to this rule. Specifically, the court has "the power to assess attorneys' fees for the willful disobedience of a court order as part of the fine to be levied on a defendant . . . and the authority to award attorneys' fees when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.*

While recognizing that a request for attorneys' fees should be granted only in exceptional circumstances, the court concludes that Leonard's attempts at avoidance of his obligations under the settlement agreement is both in bad faith and vexatious. The defendants began fulfilling their obligations under the settlement agreement in good faith. This is evidenced by a series of written and oral communications directed to Leonard's counsel over a period of several months. The defendants took great pains to detail

their efforts at fulfilling their obligations in those communications. At no time during the defendant's lengthy preparations did Leonard object to the existence of a valid settlement agreement. Rather, he waited until the end of March, after the defendants had largely met their obligations, to object.

However, the court does not rest its decision merely on Leonard's timing. Indeed, more egregious still is Leonard's behavior during the events leading to the present motion to enforce the settlement. In his initial letter to the court on March 24, 2002, Leonard was unequivocal that he wanted the court to return his case to the trial calendar because he was no longer interested in settling. Nonetheless, on May 2, 2002, through his counsel, he informed the court that he now believes settlement is possible, albeit with additional, different terms added to the agreement. The court finds this behavior troubling for two reasons.

First, as the court discussed in Section A, *supra*, one of Leonard's proposed terms requires that he not be deemed to have waived a later claim denying there is a settlement. It cannot be clearer to the court that Leonard is using settlement as the proverbial carrot, which he is tantalizingly dangling in front of the defendants, but has no intention of giving to them. Based on his new requests, and his earlier behavior, the court concludes that Leonard is not adverse to entering into a binding agreement with the defendants, watching the defendants fulfill their not-minimal obligations, and then later denying there is an agreement. The court will not sanction such egregious behavior.

Second, one of Leonard's most strenuous objections to the existence of a binding settlement agreement is that he was not adequately represented by his counsel. Because of this, he claims that he was at a disadvantage since he was legally inexperienced and confused at the time of settlement. Leonard has now proposed new settlement terms. However, he is still represented by the same attorney. Thus, either Leonard is in fact quite comfortable handling legal matters on his own, or his attorney is providing him with advice. Regardless of which scenario Leonard argues, it is obvious to the court that Leonard was not acting in good faith when he tried to deny the settlement agreement based on his confusion and his counsel's alleged inadequate representation.[10]

Thus, the court will grant the defendants' request for reasonable attorneys' fees arising from the motion to enforce the settlement.

V. CONCLUSION

The court concludes that Leonard has not denied the existence of a settlement agreement and has not demonstrated a viable defense to the validity of that agreement. Therefore, the court will enforce the settlement agreement. The court further concludes that the defendants

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[10] The court also notes with interest that, in his March 24, 2002 letter to the court, Leonard specifically asked the court to deny his counsel's motion to withdraw. Yet, in the same letter, he also argues that, due to his ineffective counsel, the settlement agreement should be struck down. The court is unclear as to how Leonard can maintain these two very different positions of this issue.

are entitled to reasonable attorneys' fees as a result of Leonard's actions.

For these reasons, IT IS HEREBY ORDERED that:

1. The Defendants' motion to enforce the settlement (D.I. 245) is GRANTED;

2. Within five (5) days of the date of this order, the Plaintiff and the Defendants shall execute the existing Settlement Agreement and General Release;

3. Upon execution of the Settlement Agreement and Release by both parties, the Plaintiff and the Defendants shall effectuate the Settlement Agreement and General Release in accordance with its terms;

4. The Defendants' request for attorneys' fees is GRANTED;

5. The Defendants shall submit a fee petition within thirty (30) days of the date of this order.

Date: May 24, 2002

UNITED STATES DISTRICT JUDGE

(2)

No. 03-435

Supreme Court, U.S.
FILED
OCT 2 2 2003
OFFICE OF THE CLERK

In The
Supreme Court of the United States

HAROLD LEONARD,

Petitioner,

v.

UNIVERSITY OF DELAWARE,
a corporation of the State of Delaware,
PAUL METTLER, and MARY MARTIN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the Court should exercise its discretion to review this case when the Third Circuit Court of Appeals determined it did not have jurisdiction to hear the underlying appeal regarding enforcement of a settlement agreement by the United States District Court for the District of Delaware.

(Negative answer sought by Respondents).

2. Whether the Court should exercise its discretion to review whether the Third Circuit Court of Appeals erred in affirming the United States District Court for the District of Delaware's award of attorneys' fees associated with the motion to enforce to Respondents.

(Negative answer sought by Respondents).

STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Not Applicable. The University of Delaware is a non-stock, membership corporation, and a creature of statute. *See* 14 Del. Code Ann. Part II.

TABLE OF CONTENTS

	Page
COUNTERSTATEMENT OF QUESTIONS PRESENTED	i
STATEMENT PURSUANT TO SUPREME COURT RULE 29.6	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
COUNTERSTATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	6
I. THE COURT SHOULD NOT EXERCISE ITS DISCRETION TO REVIEW THE THIRD CIRCUIT COURT OF APPEALS' DECISION THAT IT LACKED JURISDICTION TO REVIEW THE DISTRICT COURT'S MAY 24, 2002 ORDER ENFORCING THE SETTLEMENT AGREEMENT	6
A. Petitioner's Appeal From The District Court's May 24, 2002 Order Enforcing The Settlement Agreement Was Not Timely	6
B. The Court Of Appeals' Enforcement Of Mandatory Jurisdictional Time Periods Does Not Merit Review	7
II. THE COURT OF APPEALS DID NOT ABUSE ITS DISCRETION WHEN IT AFFIRMED THE DISTRICT COURT'S AWARD OF ATTORNEYS' FEES	9
CONCLUSION	10

TABLE OF AUTHORITIES

Page

CASES:

Browder v. Director of Dep't of Corrections, 434 U.S. 257 (1978) 7

Chambers v. Nasco, Inc., 501 U.S. 32 (1991) 9

F.T.C. v. Travelers Health Assn., 362 U.S. 293 (1960) 9

STATUTES:

28 U.S.C. § 1291 6

OTHER AUTHORITIES:

Appellate Rule 4(a)(1)(A) 7

Supreme Court Rule 10 ..... 7, 8

COUNTERSTATEMENT OF THE CASE

In July 1996, petitioner Harold Leonard ("Petitioner") filed a Complaint in the United States District Court for the District of Delaware ("District Court") against the Respondents the University of Delaware (the "University"), Paul Mettler, and Mary Martin (collectively, "Respondents") in which Petitioner alleged violations of his constitutional rights to due process and the breach of a settlement agreement in a previous lawsuit he had brought against the University. District Court Memorandum and Order, May 24, 2002, Appendix E, p. 14a.[1] On November 20, 2001, following more than five years of litigation, a settlement conference was convened by the District Court, and a settlement was reached. Petitioner's assertion that a *signed* settlement agreement was docketed in the District Court prior to November 2001 (*see* Petition for Writ of Certiorari (the "Petition"), p. 3) is erroneous. Though prior settlement terms were negotiated, Petitioner was unable to meet the terms of the settlement, as evidenced by the District Court's willingness to continue the litigation.

The District Court summarized the background of this case as follows:

> On November 21, 2001, the defendants [Respondents] maintain that they reached a settlement agreement with Leonard [Petitioner]. The terms of the purported agreement contained the following two conditions: (1) the University would

[1] Appendix references are to Appendices A-E to the Petition for Writ of Certiorari.

award Leonard a Masters of Science degree in Health Promotion and (2) the University would pay Leonard $300,000.

The parties reached agreement on these terms of settlement as a result of a lengthy settlement conference convened by the court on November 20, 2001. The November 20, 2001 settlement conference was preceded by a settlement conference on November 2, 2001. The purpose of the earlier settlement conference was to discuss the University's offer to permit Leonard to earn a Master's degree in Physical Therapy. After negotiating for several hours, Leonard rejected this offer. At that time, he indicated, through his counsel, Mr. Neuberger, that any settlement agreement would have to include a monetary payment.

Throughout the November 20, 2001 negotiations, the defendants maintain that they were under the impression that Leonard continued to be represented by counsel. [fn 5 – Although Leonard's counsel had previously filed a motion to withdraw from the case, the court merely took this motion under advisement. Accordingly, Leonard remained represented.] Under that assumption, the defendants then proceeded to implement the terms of settlement. This required them to restructure and reclassify Leonard's academic record to support a Master's Degree in Health Promotion. The defendants communicated with Leonard's counsel regarding Leonard's academic record throughout this process.

On January 18, 2002, the defendants' counsel forwarded to Mr. Neuberger the University's proposed revised transcript. Once Leonard had reviewed and approved his transcript, the University

> contends it was prepared to award him a Master's degree in Health Promotion on or about February 5, 2002. [fn 6 – February 5, 2002 is the date when the University was to award degrees, following the conclusion of the University's Winter Session.]
>
> Several weeks after sending the January 18, 2002 communication, the defendants received a voicemail message from Mr. Neuberger. In that voicemail, he indicated that his client had reviewed the proposed revised transcript and had requested that a few modifications be made. The University made the requested changes. On March 4, 2002, the defendants forwarded the revised transcript, along with the Settlement Agreement, to Mr. Neuberger.
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> On March 24, 2002, the court received a letter directly from Leonard. In that letter, Leonard stated that there was no settlement and requested that his case be put back on the trial calendar. The bases for his request are that: (1) his counsel did not represent him during settlement negotiations, (2) the settlement is "simply unacceptable," and (3) the settlement agreement is the product of duress.

District Court Memorandum and Order, May 24, 2002, Appendix E, pp. 15a-17a.

On April 15, 2002, Respondents filed a Motion to Enforce Settlement Agreement seeking to enforce the terms of the Settlement Agreement reached by the parties as a result of the November 20, 2002 settlement conference. *Id.* at 15a. On May 24, 2002, the District Court granted the Respondents' Motion to Enforce and awarded the Respondents their attorneys' fees and costs associated

with the motion. *Id.* at 25a. With regard to the award of attorneys' fees, the District Court concluded:

> While recognizing that a request for attorneys' fees should only be granted in exceptional circumstances, the court concludes that Leonard's attempts at avoidance of his obligations under the settlement agreement is [sic] both in bad faith and vexatious. The defendants [Respondents] began fulfilling their obligations under the settlement agreement in good faith. This is evidenced by a series of written and oral communications directed to Leonard's counsel over a period of several months. The defendants took great pains to detail their efforts at fulfilling their obligations in those communications. At no time during the defendants' lengthy preparations did Leonard object to the existence of a valid settlement agreement. Rather, he waited until the end of March, after defendants had largely met their obligations, to object.
>
> However, the court does not rest its decision merely on Leonard's timing. Indeed more egregious still is Leonard's behavior during the events leading to the present motion to enforce the settlement. In his initial letter to the court on March 24, 2002, Leonard was unequivocal that he wanted the court to return his case to the trial calendar because he was no longer interested in settling. Nonetheless on May 2, 2002, through his counsel, he informed the court that he now believes settlement is possible, albeit with additional, different terms to the agreement. The court finds this behavior troubling for two reasons.

> First, . . . one of Leonard's proposed terms requires that he not be deemed to have waived a later claim denying there is a settlement . . .
>
> Second, one of Leonard's most strenuous objections to the existence of a binding settlement agreement is that he was not adequately represented by his counsel . . . However, he is still represented by the same attorney.

Id. at 22a-25a.

On June 13, 2002, Respondents submitted a fee petition and motion for leave to deduct their fees from the $300,000 settlement amount before remitting the settlement amount to Petitioner. District Court Order, July 9, 2002, Appendix D, p. 11a. In its July 9, 2002 Order, the District Court approved the fee petition and the deduction of fees from the settlement amount, but the District Court ordered the Respondents to remit to Petitioner those monies previously withheld from the settlement as costs. *Id.* at 13a.

On August 8, 2002, Petitioner filed an appeal in the Third Circuit Court of Appeals ("Court of Appeals"). Court of Appeals Opinion, May 8, 2003, Appendix B, p. 5a. On May 8, 2003, the Court of Appeals found that it did not have jurisdiction to review the District Court's May 24, 2002 decision to enforce the settlement agreement due to the untimeliness of Petitioner's (then Appellant) appeal. Court of Appeals Judgment, May 8, 2003, Appendix C, p. 9a. The Court of Appeals determined that it did have jurisdiction to review the District Court's July 9, 2002 decision to award attorneys' fees, and the Court of Appeals affirmed that decision on the basis that the District Court did not abuse its discretion. Court of Appeals Opinion,

May 8, 2003, Appendix B, pp. 6a-7a. On June 19, 2003, the Court of Appeals denied Petitioner's Sur Petition for Rehearing *En Banc*. Court of Appeals, Sur Petition for Rehearing *En Banc*, June 19, 2003, Appendix A, p. 2a.

Petitioner filed the instant Petition on September 17, 2003.

REASONS FOR DENYING THE WRIT

I. THE COURT SHOULD NOT EXERCISE ITS DISCRETION TO REVIEW THE THIRD CIRCUIT COURT OF APPEALS' DECISION THAT IT LACKED JURISDICTION TO REVIEW THE DISTRICT COURT'S MAY 24, 2002 ORDER ENFORCING THE SETTLEMENT AGREEMENT

A. Petitioner's Appeal From The District Court's May 24, 2002 Order Enforcing The Settlement Agreement Was Not Timely.

The District Court's May 24, 2002 Order granting Respondents' (then Defendants) motion to enforce the settlement agreement was a decision on the merits (28 U.S.C. § 1291), and, as such, Petitioner (then Plaintiff) had 30 days to appeal the Order. Fed. R. App. Pro. 4(a)(1)(A). *See* Court of Appeals' Opinion, May 8, 2003, Appendix B, pp. 5a-6a. Petitioner failed to meet the prescribed time period for filing a notice of appeal of the Order enforcing the settlement agreement, and as such the Court of Appeals lacked jurisdiction to review the matter.

Section 1291 provides in part, "The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . ."

Appellate Rule 4(a)(1)(A) provides, "In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered." The 30 day time period is a mandatory limit on the time for filing an appeal. *See Browder v. Director of Dep't of Corrections*, 434 U.S. 257 (1978). Absent a timely notice of appeal, the Court of Appeals is without jurisdiction to review the District Court's Order.

Petitioner's notice of appeal was filed on August 8, 2002, more than 30 days after entry of the May 24, 2002 Order. The Court of Appeals, therefore, did not have jurisdiction to review the Order enforcing the settlement agreement. Significantly, Petitioner mentions only in passing the Court of Appeals' ruling that it lacked jurisdiction. Petition, p. 1 n.1, p. 8. Petitioner fails to present any argument or case law to suggest that the Court of Appeals' ruling was in error.

B. The Court Of Appeals' Enforcement Of Mandatory Jurisdictional Time Periods Does Not Merit Review.

The Court of Appeals had no choice but to decline to review the Order enforcing the settlement agreement. The jurisdictional time period prescribed by Rule 4(a)(1)(A) is mandatory. As such, Respondents respectfully submit that the Court should not exercise its discretion to review this decision.

Reviewing a court's proper application of a settled rule of appellate jurisdiction hardly rises to the level of "compelling" as required by Supreme Court Rule 10. Though neither exhaustive nor controlling, the list of considerations

governing review on certiorari includes the following, none of which are present in the instant Petition:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Supreme Court Rule 10. Rule 10 concludes by stating that even "erroneous factual findings or the misapplication of a properly stated rule of law" will not usually warrant grant of a petition. *Id.*

Here, Petitioner would have the Court review a non-discretionary, correct application of a well-established federal rule of appellate jurisdiction. No conflict among the courts exists. No important federal question exists. And no support for review by the Court appears in Petitioner's papers. Petitioner's failure to address the jurisdictional issue in any meaningful way exposes most tellingly the

absence of any possible reason for this Court to review the Court of Appeals' decision that it lacked jurisdiction to review the District Court's May 24, 2002 decision.

Virtually all of the Petitioner's brief is directed at a matter to which the Court of Appeals gave no consideration in its decision because it found it had no jurisdiction to do so – the merits of the District Court's decision to enforce the parties' settlement agreement. "In accord with accepted principles, [this Court] will decline to consider these issues" that the Court of Appeals did not address or decide. *See F.T.C. v. Travelers Health Assn.*, 362 U.S. 293, 299 n.4 (1960).

II. THE COURT OF APPEALS DID NOT ABUSE ITS DISCRETION WHEN IT AFFIRMED THE DISTRICT COURT'S AWARD OF ATTORNEYS' FEES

Petitioner filed a timely notice of appeal from the District Court's July 9, 2002 Order awarding of $5,837.75 in attorneys' fees to the Respondents. Recognizing the District Court's inherent equitable power to award attorneys' fees, when appropriate, and Petitioner's "insupportable renunciation" of the settlement agreement, the Court of Appeals correctly affirmed the District Court's July 9 Order.

In *Chambers v. Nasco, Inc.*, the Court recognized that courts may assess attorneys' fees against a party for that party's vexatious, wanton, oppressive and/or bad faith actions. 501 U.S. 32, 46 (1991). As chronicled in both the Court of Appeals and District Court decisions, Petitioner engaged in "insupportable" and "egregious" behavior. Court of Appeals Opinion, May 8, 2003, Appendix B, p. 7a;

District Court Memorandum and Order, May 24, 2002, Appendix E, pp. 23a-24a.

The Court of Appeals, after reviewing the record and the parties' contentions, "conclude[d] that the District Court did not abuse its discretion in awarding attorneys' fees." Court of Appeals' Opinion, May 8, 2003, Appendix B, p. 7a. For the reasons set forth in the District Court Memorandum and Order, and by the Court of Appeals, that decision was plainly correct. District Court Memorandum and Order, May 24, 2002, Appendix E, pp. 22a-25a.

In any case, the Court of Appeals' decision on this issue involving the exercise of discretion by the District Court is not one that warrants review by this Court.

CONCLUSION

For all of the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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Dated: October 22, 2003 *Attorneys for Respondents*